REPORT ON
THE YOUTH DRUG DETOXIFICATION AND STABILIZATION ACT

March 22, 2006

Saskatchewan Information and Privacy Commissioner
503 – 1801 Hamilton Street
Regina, Saskatchewan
S4P 4B4
Website: www.oipc.sk.ca
Email: webmaster@oipc.sk.ca

106-04377/

Saskatchewan
Information and Privacy
Commissioner

503 - 1801 Hamilton Street
Regina, Saskatchewan
S4P 4B4

Tel: (306) 787-8350
Fax: (306) 798-1603
Website: www.oipc.sk.ca

March 22, 2006

Honourable Myron Kowalsky
Speaker of the Legislative Assembly
129 Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Mr. Speaker:

I am submitting to you and to Members of the Legislative Assembly, in accordance with section 33(a) of *The Freedom of Information and Protection of Privacy Act*, my Report on *The Youth Drug Detoxification and Stabilization Act*.

Respectfully submitted,

R. Gary Dickson, Q.C.
Saskatchewan Information and Privacy Commissioner

Enclosure

TABLE OF CONTENTS

I INTRODUCTION 1

II BACKGROUND 4

The Freedom of Information and Protection of Privacy Act and *The Local Authority Freedom of Information and Protection of Privacy Act* 4

The Health Information Protection Act 6

III ANALYSIS 7

Section 18 of the Act 7

Nature of the Personal Information 8

Impact of Excluding FOIP/LA FOIP 9

Confusing/Conflicting Rules 9

Omission of "use" 10

Impact of Excluding Parts II, IV and V of HIPA 10

(i) Impact on Youth 10

(ii) Impact on the Parents/Guardians 12

Section 18(2) 12

Section 18(3) 12

Section 6 13

IV CONCLUSION 13

V RECOMMENDATIONS 13

I INTRODUCTION

The Legislative Assembly passed *The Youth Drug Detoxification and Stabilization Act* ("the Act") and Royal Assent was granted on December 2, 2005. Prior to that date, the document was described as "Bill 27". The Act has not yet been proclaimed. The Office of the Information and Privacy Commissioner ("OIPC") understands that this law is intended to complement the Premier's Project Hope and its enhancement of addictions services in Saskatchewan. The OIPC further understands that this Act is viewed as a last resort for youth who are resistant to voluntary detoxification, stabilization and treatment.

It is, of course, for a sovereign Legislative Assembly to determine its legislation. The OIPC is mindful of the very strong support evidenced for this legislative initiative from both sides of the Assembly. Obviously there is a great deal of concern about the injury caused to Saskatchewan youth through drug abuse and an evident appetite for new tools and processes to address those problems.

Although Bill 27 attracted Royal Assent in late 2005, regulations to implement the Act have not yet gone into force. Government has also signalled an intention to monitor the Act to assess the need for amendments to better achieve the purpose of the Act. The Honourable Mr. Addley indicated in the Assembly that the Government will *"monitor the use of this Act closely using an evaluation mechanism to determine the effectiveness of this approach. This will continue to ensure the rights of youth are protected as well as their immediate safety"*. It is in the spirit of informing the Assembly and the people of Saskatchewan of potential amendments that the OIPC provides this commentary.

The focus and concern of this office is solely for the impact of the Act on access to information and privacy rights of Saskatchewan residents. It is for another independent officer of the Assembly, the Children's Advocate, to offer whatever advice he thinks appropriate on the full dimensions of the Act.

Although there has recently been a new focus on access to information and protection of privacy in Saskatchewan, it is the experience of this office that many in the public sector and in the public are not clear as to precisely what those access and privacy rights ("information rights") comprise, how they can be employed and what would constitute 'best practices' in respect of those information rights. The OIPC has not yet produced all of the interpretative materials that will help interpret and clarify Saskatchewan's three major access and privacy statutes: *The Freedom of Information and Protection of Privacy Act* ("FOIP"), *The Local Authority Freedom of Information and Protection of Privacy Act* ("LA FOIP") and *The Health Information Protection Act* ("HIPA"). It may be that when Bill 27 was prepared and subsequently debated that there was some uncertainty about the impact of Bill 27 on those information rights.

I INTRODUCTION (CONTINUED)

Despite a review of the debate at each stage of Bill 27 including the Hansard record of the November 30, 2005 Human Services Committee meeting, the OIPC has been unable to find any discussion of section 18 or section 22 of the Act. This would include any discussion of why it was determined that it would be important for youth and parents/guardians to be denied the benefit of the access and privacy rights they would otherwise enjoy in Saskatchewan. More specifically, the OIPC cannot find any detailed explanation as to why it was determined to be necessary to exempt the Act and the activities it enables from the FOIP, LA FOIP statutes and much of HIPA.

Section 18 of the Act provides as follows:

> *18(1) Subject to subsection (2), no person who exercises any power, duty or function pursuant to this Act or the regulations shall disclose information collected for the purposes of that power, duty or function except as otherwise authorized by this Act or the regulations.*
>
> *(2) Subsection (1) does not apply to:*
> *(a) a parent of a youth with respect to information concerning that youth;*
> *(b) a police officer; or*
> *(c) a prescribed person or prescribed class of persons.*
>
> *(3) Subject to the regulations and subsection (4), a person to whom this section applies may disclose information:*
> *(a) for the purposes of administering this Act or the regulations;*
> *(b) to another person exercising a power, duty or function pursuant to this Act or the regulations;*
> *(c) for the purposes of performing any duty or exercising any power conferred or imposed on that person pursuant to this Act;*
> *(d) for the purposes of arranging, assessing the need for, providing, continuing, or supporting the provision of an assessment, a detoxification or stabilization service or any other medically necessary service or treatment;*
> *(e) for the purposes of monitoring compliance with a community order or detoxification order;*
> *(f) if the person believes, on reasonable grounds, that the disclosure will avoid or minimize a danger to the health or safety of the assessed youth;*
> *(g) if the disclosure is permitted pursuant to any Act or regulation;*
> *(h) to comply with a subpoena, warrant or court order issued by a court, person or body that has authority to compel the production of information;*
> *(i) with the consent of the assessed youth to whom the information relates;*
> *(j) to the official representative of the assessed youth or the assessed youth's legal counsel; or*
> *(k) in the prescribed circumstances.*

I INTRODUCTION (CONTINUED)

(4) A person to whom this section applies shall disclose only the information that is reasonably necessary for the purposes for which it is being disclosed.

(5) The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to information or records prepared, maintained or disclosed for the purposes of this Act.

Section 22 of the Act provides as follows:

22 Subsection 4(4) of The Health Information Protection Act is amended:
(a) by striking out "or" after clause (h); and
(b) by adding the following after clause (h):
"(h.1) The Youth Drug Detoxification and Stabilization Act; or".

The OIPC was not consulted in the drafting of Bill 27 or at any other stage prior to Royal Assent.

Prior consultation with the OIPC is not a legislative requirement but on a number of occasions the office has been consulted by bill sponsors to discuss access and privacy dimensions of new legislative initiatives. That prior consultation may result in revision of a bill or alternatively may ensure that the bill sponsor will have a clear understanding of any concerns that our office may have.

The OIPC was consulted by the Department of Health in February 2006 in anticipation of proclamation of the Act later this spring. This was a welcome opportunity to learn more about the context for the Act and the intentions with respect to implementation.

Given the significant privacy and access to information implications of the Act, the Commissioner determined that it would be appropriate to provide information to Members of the Legislative Assembly and the people of Saskatchewan about the Act and its impact on the information rights as guaranteed by the FOIP, LA FOIP and HIPA.

The specific authority for this commentary is section 33(a) of the FOIP Act that provides as follows:

33 The [Saskatchewan Information and Privacy] *Commissioner may:*
(a) offer comment on the implications for privacy protection of proposed legislative schemes or government programs... " [s. 33(a) FOIP Act]

I INTRODUCTION (CONTINUED)

Furthermore, section 52 of the HIPA Act provides as follows:

> 52 *The* [Saskatchewan Information and Privacy] *Commissioner may:*
> *(a) offer comment on the implications for personal health information of proposed legislative schemes or programs of trustees;*
> *(b) after hearing a trustee, recommend that the trustee:*
> ...
> *(c) in appropriate circumstances, comment on the collection of personal health information in a manner other than directly from the individual to whom it relates;*
> *(d) from time to time, carry out investigations with respect to personal health information in the custody or control of trustees to ensure compliance with this Act;*
> *(e) comment on the implications for protection of personal health information of any aspect of the collection, storage, use or transfer of personal health information.*

II BACKGROUND

(a) *The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act*

Saskatchewan residents enjoy the right to access information about themselves held in government data banks, and limits on the government's ability to collect, use and disclose such information. These rights are defined in the FOIP Act and LA FOIP Act. The FOIP Act has been in force since 1992 and the LA FOIP Act has been in force since 1993.

The FOIP Act governs bodies described as "government institutions"[1]. This would include all provincial government departments that would be involved in the protection and treatment of youth. The LA FOIP Act governs bodies described as "local authorities"[2]. This would include regional health authorities, school divisions, municipalities, colleges and universities. The Department of Justice is responsible for the administration of both statutes but does not provide oversight of the public bodies covered by the statutes. Saskatchewan Justice in 2005 created the Access and Privacy Branch within that Department to provide leadership and support in training of staff within the Government and local authorities to achieve full statutory compliance.

[1] FOIP Act, s. 2(1)(d)
[2] LA FOIP Act, s. 2(f)

II BACKGROUND (CONTINUED)

Both FOIP and LA FOIP Acts have expansive definitions of "personal information"[3]. It is likely that at least some of the information that will be collected, used and disclosed under the Act will include personal information. Both FOIP and LA FOIP have specific provisions for collection, use and disclosure of personal information. Personal information can be used and disclosed under both FOIP and LA FOIP without consent for the purpose for which the information was obtained or compiled by the public body or for a use that is consistent with that purpose[4]. There is specific authority in both FOIP and LA FOIP for personal information to be disclosed without consent "where necessary to protect the mental or physical health or safety of any individual"[5]. Both FOIP and LA FOIP enumerate more than twenty other circumstances when personal information can be disclosed without consent[6]. Both FOIP and LA FOIP permit an individual to obtain access to their own information[7] and to request that errors be corrected[8]. In the case of a youth, both FOIP and LA FOIP Acts contain a provision that where the individual is less than 18 years of age, any right or power conferred on the individual by the FOIP or LA FOIP Acts may be exercised by the individual's parent/guardian in situations where, in the opinion of the head [the Minister or CEO of the public body, as applicable], the exercise of the right or power would not constitute an unreasonable invasion of the privacy of the individual[9].

Fundamental to both FOIP and LA FOIP Acts is the right of appeal to an independent Information and Privacy Commissioner who reports to the Legislative Assembly and not to the Government[10]. The Commissioner oversees the activities of the various public bodies in terms of compliance with FOIP and LA FOIP Acts.

FOIP and LA FOIP Acts are similar to the federal *Access to Information Act* and the federal *Privacy Act*.

Former Supreme Court Justice Gerard v. LaForest recently issued his report as special advisor to the federal Minister of Justice – *The Offices of the Information and Privacy Commissioners: The Merger and Related Issues*. He stated that:

> *"The Access to Information Act gives the individuals a right of access to government information. The Privacy Act permits them to gain access to information about themselves held in government data banks, and limits government's ability to collect, use and disclose such information...*

---

[3] FOIP Act, s. 2(1)(g) and 24; LA FOIP Act, s. 2(h) and 23
[4] FOIP Act, s. 28, 29(2)(a); LA FOIP Act, s. 27, 28(2)(a)
[5] FOIP Act, s. 29(2)(m); LA FOIP S.28(2)(l)
[6] FOIP s. 29(2) and Reg. s. 14-17; LA FOIP Act, s. 28(2) and Reg. s. 9,10
[7] FOIP Act, s. 30; LA FOIP Act, s. 30
[8] FOIP Act, s. 31; LA FOIP Act, s. 31
[9] FOIP Act, s. 59(d); LA FOIP Act, s. 49(d)
[10] FOIP Act, s. 49; LA FOIP Act, s. 38

II BACKGROUND (CONTINUED)

> ***The rights protected by both Acts are of the highest importance in the functioning of a modern democratic state…So important is the right to government information that some have come to refer to it as "quasi-constitutional" in nature***…" (emphasis added)
>
> [See Nautical Data International Inc. v. Canada (Minister of Fisheries and Oceans), 2005 FC 407 at para.8; Canada (Attorney General) v. Canada (Information Commissioner), [2004] 4 F.C.R. 181 at para. 20, 255 F.T.R. 56, 15 Admin. L.R. (4th) 58, 32, C.P.R. (4th) 464, 117 C.P.R. (2d) 85, 2004 F.C. 431, rev'd (2005), 253 D.R.R. (4th) 590, 335 N.R. 8, 40 C.P.R. (4th) 97, 2005 FCA 199, leave to appeal to S.C.C. requested; Canada (Attorney General) v. Canada (Information Commissioner), [2002] 3 F.C. 630 at para. 20, 216 F.T.R. 247, 41 Admin. L.R. (3d) 237, 2002 FCT 128, 3430901 Canada Inc. v. Canada (Minister of Industry), [2002] 1 F.C. 421 at para. 102, (2001), 282 N.R. 284, 45 Admin L. R. (3d) 182, (2001) 14 C.P.R. (4th) 449, 2001 FCA 254, leave to appeal to S.C.C. refused, [2001] S.C.C.A. No. 537 (Q.L.)]
>
> ***The courts have also described the Privacy Act as carrying a "quasi-constitutional mission"***. (emphasis added)
> [Lavigne v. Canada (Office of the Commissioner of Official Languages), [2002] 2 S.C.R. 773 at paras. 24-25]

In Saskatchewan, the importance of the FOIP and LA FOIP Act is affirmed by paramountcy provisions that ensure that in the event there is a conflict, unless otherwise stated by the Assembly, FOIP or LA FOIP will prevail[11].

(b) *The Health Information Protection Act*

Since September 1, 2003, HIPA has been in force in Saskatchewan. It applies to health information "trustees"[12] that have in their custody or control "personal health information"[13]. The list of trustees captures every government department including Saskatchewan Health and Saskatchewan Community Resources and Employment, every regional health authority and health professionals such as physicians and psychologists in their private offices and clinics. HIPA sets out the rules for the collection, use and disclosure of personal health information[14]. Personal health information can be thought of a subset of "personal information". It includes information with respect to the physical or mental health of an individual; information with respect to the health service provided to the individual; registration information and information collected in the course of providing health services to someone.

---

[11] FOIP Act, s. 23; LA FOIP Act, s. 22
[12] HIPA, s. 2(t)
[13] HIPA, s. 2(m)
[14] HIPA, Part III & Part IV

II BACKGROUND (CONTINUED)

Clearly, much of the information collected, used or disclosed under the Act will qualify as "personal health information". When the personal health information is in the custody or control of a government department, the applicable law will be HIPA and not the FOIP Act.

HIPA permits a great deal of use and disclosure of personal health information among persons and bodies involved in providing care to an individual without any requirement for consent of the individual[15].

HIPA provides that any right or power conferred under that statute can be exercised by a minor in situations where, in the opinion of the trustee, the minor understands the nature of the right or power and the consequences of exercising that right or power[16]. Otherwise, the right or power will be exercised by the parent/guardian where, in the opinion of the trustee, the exercise of the right or power would not constitute an unreasonable invasion of the privacy of the individual[17].

As with the FOIP and LA FOIP Acts, there is a right of appeal to an independent Information and Privacy Commissioner[18]. The Commissioner also has broad powers to oversee the activities of trustees in terms of HIPA compliance[19].

III ANALYSIS

(a) Section 18 of the Act

Of particular concern to the OIPC is section 18(5) of the Act. That provides as follows:

> *18(5) The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to information or records prepared, maintained or disclosed for the purposes of this Act.*

Hansard does not reveal an explanation as to why section 18(5) was seen as a necessary feature of the Act. This office is unclear why it was determined that a total exclusion from FOIP and LA FOIP was appropriate when much less severe remedies were available such as specifically making the Act paramount to FOIP or LA FOIP Acts in cases of conflict. That would have ensured that those rights available to parents/guardians under FOIP or LA FOIP would have for the most part remained in force.

---

[15] HIPA, ss.26-30
[16] HIPA, s. 56(c)
[17] HIPA, s. 56(d)
[18] HIPA, s. 42; 14
[19] HIPA, s. 52(d)

III ANALYSIS (CONTINUED)

The OIPC strongly recommends that persons in Saskatchewan should never be deprived of their fundamental democratic rights guaranteed by a quasi-constitutional law except in the most compelling case and after a careful balancing of the specific risks and specific harm that would result from an exercise of those rights.

(b) Nature of the Personal Information

A considerable body of information will likely be gathered by an approved applicant initially to decide whether or not to initiate a procedure under the Act and subsequently to prosecute an apprehension or community order application. This will likely include "personal health information" as that phrase is defined in section 2 of HIPA and/or "personal information" as that phrase is defined in section 24 of FOIP and section 23 of LA FOIP. This will likely be information about:

- the assessed youth's drug addition or drug abuse;
- the assessed youth's health history;
- the assessed youth's current physical and mental health;
- the history of activity related to the addiction or abuse including police reports;
- interactions of the individual with family members, social workers, health care workers, police and perhaps many others;
- living circumstances of the assessed youth;
- details about access to drugs;
- reports and documents detailing all assessments, detoxification and stabilization services that the assessed youth will undergo; and,
- report from an examination(s) of the assessed youth by one and in most cases, two physicians.

This personal information and personal health information will be particularly prejudicial information about the assessed youth. The fact that the Act is silent on what will happen to this information once a youth has successfully undergone treatment is of concern. Will this information remain in the records of the particular treatment or detoxification facility, in the records of the regional health authority or in the records of a police agency indefinitely? Since all other personal information in the possession or under the control of a provincial government department will be subject to the FOIP Act and HIPA and subject to a record retention and disposition schedule, will the information described in section 18(5) be treated separately? If so, how will this be done? Who will be able to use this information and for what purposes? Will this information be destroyed by shredding? Will it be available to school authorities? Will this information become part of the student record under the control of the school division? To what extent will the information referred to in section 18(5) follow the youth in later years?

III ANALYSIS (CONTINUED)

(c) Impact of Excluding FOIP/LA FOIP

Section 18(5) will operate to effectively deny any youth or parent/guardian subject to this Act an array of rights and protections otherwise guaranteed by the FOIP or LA FOIP Acts. These rights that will be denied youth and their parents/guardians include the following:

- The requirement that information about the youth and parents/guardians will be as accurate and complete as is reasonably possible [section 27 FOIP or section 25 LA FOIP];
- The right to obtain access to a record that contains personal information about the youth and parents/guardians [section 31 FOIP or section 30 LA FOIP];
- The right to request correction of personal information where there is an error or omission [section 32 FOIP or section 30 LA FOIP];
- In the event that the government institution or local authority refuses to correct the alleged error, the right to have annotation made on the record that a correction was requested but not made [section 32 FOIP or section 31 LA FOIP];
- The right for the parents/guardians to give some person written authorization to act on their son or daughter's behalf [section 59(e) FOIP or section 49(e) LA FOIP]; and
- The right to request the Information and Privacy Commissioner to review a decision made by a government institution or local authority [section 49 FOIP or section 38 LA FOIP].

(d) Confusing/Conflicting Rules

When the Human Services Committee considered Bill 27, it was indicated by the Honourable Mr. Addley that government's intent was to make the process *"as seamless and as user-friendly as possible for the parents while at the same time respecting as much as possible the children's rights"*. For the Act to be as seamless and user-friendly as possible, the OIPC recommends that instead of carving out certain programs from all or parts of our general access and privacy laws and substituting entirely different rules for the collection, use and disclosure of personal information or personal health information, it might be preferable to integrate the new process as much as possible into the FOIP, LA FOIP and HIPA regime. The OIPC has already expressed concerns about confusion caused by the layering of the Overarching Privacy Framework on top of the FOIP Act and HIPA. Lack of harmony of collection, use and disclosure rules tends to frustrate training efforts to simplify the process for government workers and the public alike.

III ANALYSIS (CONTINUED)

(e) Omission of "use"

Section 18 is focused exclusively on "disclosure". Disclosure is not defined in section 2 of the Act. That term is generally understood in an information privacy context to refer to sharing personal information with a different organization such that the personal information is no longer under the control of the sharing organization. That is the way that our oversight office defines "disclosure" for purposes of HIPA, FOIP and LA FOIP. "Use" refers to the application of personal information by and within a single organization's control. It will likely be confusing for health workers to be confronted with different definitions of "use" and "disclosure" under the Act than they are accustomed to under HIPA.

In the Act, it appears that there is no limit on how any person who exercises any power, duty or function may use the personal information. Normally in any law dealing with privacy, both use and disclosure need to be addressed. That however is not the case with section 18. How can the youth or parents/guardians find out what uses have been made of the personal information?

(f) Impact of Excluding Parts II, IV and V of HIPA

(i) Impact on Youth

In addition, the consequential amendment to *The Health Information Protection Act* (section 22) will effectively deny any individual subject to this Act an extensive array of rights and protections otherwise guaranteed by that statute. These rights that are eliminated for persons subject to the Act include the following:

- Any client control over the information about them by means of a consent requirement [sections 5, 6 and 7];
- The right to prevent one's personal health information from being disclosed to many others by means of an electronic health record [section 8];
- The right to be informed about how the personal health information will be used or disclosed and to whom and for what purpose(s) [section 9];
- The right to be informed about any disclosures of personal health information made without the person's consent [section 10];
- The right not to have to produce one's health services number in order to receive non-health related products or services [section 11];
- The right to request access to their own personal health information [section 12];

III ANALYSIS (CONTINUED)

- The right to request an amendment of errors in the record of their own personal health information and the right to have a notation made in that record if no amendment is made [section 13];
- The right to request the Information and Privacy Commissioner to review an action taken or decision made by a health information trustee [section 14];
- The right to designate someone else to exercise their powers or rights with respect to their own personal health information [section 15];
- The right to not have more of one's personal health information collected or used than is necessary for the purpose for which that information was collected [section 23];
- The right to require health information trustees to use or disclose only de-identified personal information in cases where that de-identified information will serve the purpose [section 23(4)];
- The right to require that the primary purpose for collecting personal health information is for the purposes of a program, activity or service of the trustee that can reasonably be expected to benefit the individual [section 24(1)];
- The right to require that if personal health information is collected for a secondary purpose, that secondary purpose must be consistent with those purposes for which such information could be disclosed [section 24(2)];
- The requirement that in cases of indirect collection of personal health information, reasonable steps must be taken to verify its accuracy [section 25(3)];
- The requirement that when personal health information is disclosed for the provision of health or social services to the individual in circumstances where the disclosure is for the benefit of the individual and it is not reasonably practicable to obtain consent, the recipient is restricted to use the information for that purpose and no other [section 27(6)];
- The requirement that before personal health information of the individual can be used or disclosed for research, the research project must meet the requirements that include approval by a designated Research Ethics Committee [section 29];
- The requirement that someone who receives the person's personal health information in violation of HIPA must not use or disclose the information without the consent of the individual [section 30];

III ANALYSIS (CONTINUED)

(ii) Impact on the Parents/Guardians

Much of the legislative debate with respect to Bill 27 focused on the need to support parents/guardians who are overwhelmed with the challenge of dealing with a son or daughter involved in drug abuse. It appears that there is a tacit assumption underlying the Act that parents/guardians, social workers, health professionals, etc. will all either be in agreement or in some cases, parents/guardians may defer to the professionals to deal with their youth's addiction. FOIP, LA FOIP and HIPA all permit parents/guardians to exercise the rights and powers on behalf of their sons or daughters and hopefully in the best interests of those sons or daughters. So long as the parents/guardians are in full agreement with police, youth workers and health professionals as to what is being done with information about their youth, it appears there may be much less concern about rights lost by virtue of section 18(5). On the other hand, what happens when, in the course of detoxification, stabilization or treatment of an affected youth, one or both parents/guardians disagree with the professionals?

Significantly, not only will a youth forfeit the above described rights but so will the parents/guardians. While there may well be circumstances where certain information may be denied a youth, it is parents/guardians who could also be denied access to the personal health information or personal information of their son or daughter.

(g) Section 18(2)

Section 18(2) exempts parents/guardians "with respect to information concerning that youth" from the prohibition in section 18(1). That will not change the fact however that the range of remedies otherwise available to those parents/guardians under the FOIP or LA FOIP Acts or HIPA may be denied. Parents/guardians would have to rely on the willingness of government workers and health providers to share, but if push came to shove, they would not have the usual statutory remedies available to them. This interpretation is based on section 18(5) and section 22. Those two sections focus on the nature of the information and not the qualifications of the individual seeking access.

How broad will the exception in section 18(2)(c) be? While there may be no intention at present to expand the list of prescribed classes of persons excepted, we are unable to predict future amendments to the legislation with any certainty and are not comfortable with the level of safeguards in place in the Act.

(h) Section 18(3)

In reference to section 18(3), who monitors inappropriate uses or disclosures of information? What consequences exist for an inappropriate use or disclosure of personal information or personal health information? What independent oversight is provided?

III ANALYSIS (CONTINUED)

(i) Section 6

Every assessed youth is entitled to receive a copy of the order pursuant to which there has been an apprehension or detention as soon as is reasonably practicable. To obtain access to other supporting information that led to the order is another matter altogether. In the event of an appeal, the appellant has the right to see any written evidence placed before the review panel. This would not necessarily mean access to all of the personal information gathered by social workers, police, etc. This section does not apparently contemplate disclosure of any written evidence at a much earlier stage and possibly even before an appeal is launched.

This office recommends inclusion of a right to access personal information and personal health information at the earliest possible opportunity and ideally, in advance of a review or court proceedings.

IV CONCLUSION

It is hard to imagine that the elimination of each of the foregoing rights and protections is absolutely essential to a program designed to protect vulnerable persons. Many of these rights that have been eliminated by the Act would seem to be consistent with the kind of appropriate and professional services we would all expect will be provided by Saskatchewan health care and social services professionals.

I respectfully request that the Legislative Assembly consider whether the quasi-constitutional information rights of any Saskatchewan residents should be eliminated without clear and compelling evidence that those specific rights are actually frustrating the objectives of the Act.

V RECOMMENDATIONS

At such time as the Legislative Assembly reviews the Act for possible amendments we recommend the following:

1) That the Assembly reconsider the decision to exclude all records and information under the Act from FOIP, LA FOIP and the three designated parts of HIPA;

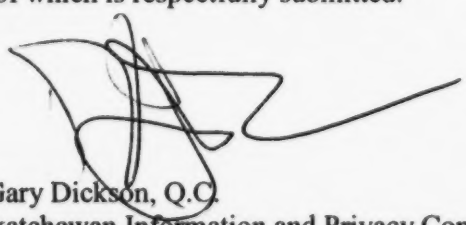
2) That the Assembly consider a paramountcy provision that would ensure that in the case of conflict with FOIP, LA FOIP or HIPA, the provision in the Act would prevail;

V RECOMMENDATIONS (CONTINUED)

3) That, in the event the Assembly determines an exclusion from FOIP, LA FOIP and HIPA (Parts II, IV and V) is still necessary, consideration be given to addressing the following features in the Act:

   a) Rules with respect to the uses that may be made of the personal information and personal health information of an assessed youth;
   b) Right of access for the assessed youth and parent/guardian at any stage of proceedings and not just a limited right at the later stages of the process involving an appeal;
   c) Right to request correction of incorrect information and if no correction will be made, the right to have a notation of disagreement placed in the record;
   d) Right to authorize someone else to access personal information or personal health information;
   e) Ensure appropriate oversight of the practices for collection, use and disclosure of personal information and personal health information in the Act by an agency or office independent of government;
   f) Require any person or organization that has in their custody or under their control personal information or personal health information to take reasonable measures to safeguard that information against loss, threat or hazard to the security or integrity of the information, unauthorized access to or use, disclosure or modification of the information and to establish policies and procedures to maintain administrative, technical and physical safeguards that will protect the integrity, accuracy and confidentiality of the information;
   g) Create an offence to fail to protect personal information or personal health information supported by a fine equivalent to the fines provided for in HIPA ($50,000 for an individual or $500,000 for an organization).

All of which is respectfully submitted.



R. Gary Dickson, Q.C.
Saskatchewan Information and Privacy Commissioner